



**COVER NOTE ISSUED BY  
THE INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY OF SINGAPORE**

**SECTION 10 (ACQUISITIONS AND CONSOLIDATIONS INVOLVING  
DESIGNATED TELECOMMUNICATION LICENSEES, DESIGNATED BUSINESS  
TRUSTS AND DESIGNATED TRUSTS) OF THE CODE OF PRACTICE FOR  
COMPETITION IN THE PROVISION OF TELECOMMUNICATION SERVICES,  
ADVISORY GUIDELINES GOVERNING CONSOLIDATION REVIEW AND  
TENDER OFFER PROCESS AND CONSEQUENTIAL CHANGES TO THE CODE  
OF PRACTICE FOR COMPETITION IN THE PROVISION OF  
TELECOMMUNICATION SERVICES**

**9 APRIL 2012**

**PART I: INTRODUCTION**

**PART II: SUMMARY OF COMMENTS RECEIVED IN IDA'S PUBLIC  
CONSULTATION AND CHANGES TO PROPOSED FRAMEWORK**

**PART III: SUMMARY OF KEY CONSEQUENTIAL CHANGES TO THE CODE  
OF PRACTICE FOR COMPETITION IN THE PROVISION OF  
TELECOMMUNICATION SERVICES ARISING FROM REVISIONS  
TO THE TELECOMMUNICATIONS ACT**

**PART IV: CONCLUSION**

**SECTION 10 (ACQUISITIONS AND CONSOLIDATIONS INVOLVING DESIGNATED TELECOMMUNICATION LICENSEES, DESIGNATED BUSINESS TRUSTS AND DESIGNATED TRUSTS) OF THE CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATION SERVICES, ADVISORY GUIDELINES GOVERNING CONSOLIDATION REVIEW AND TENDER OFFER PROCESS AND CONSEQUENTIAL CHANGES TO THE CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATION SERVICES**

**9 APRIL 2012**

In exercise of the powers conferred by –

- (a) Sections 26 (1)(i) to (viii) of the Telecommunications Act (Chapter 323) (the “**Act**”), the Info-communications Development Authority of Singapore (“**IDA**”) hereby issues the Code of Practice for Competition in the Provision of Telecommunication Services 2012 (“**Code 2012**”) which set out the revised Section 10 (the “**Revised Section 10**”) of the Code 2012; and
- (b) Section 28(1) of the Act, IDA hereby issues the revised Telecom Consolidation and Tender Offer Guidelines (the “**Revised Guidelines**”).

**PART I: INTRODUCTION**

1. On 27 August 2010, the Ministry of Information, Communications and the Arts (“**MICA**”) conducted a public consultation on the proposed amendments to the Act. Amongst others, MICA sought public comments on proposed revisions to Part VA of the Act, which sets out the legislative framework for review of mergers and acquisitions (“**M&As**”) in the telecommunications sector.
2. Arising from the proposed revisions to Part VA of the Act, IDA had reviewed Section 10 of the Code of Practice for Competition in the Provision of Telecommunication Services 2010 (the “**Code 2010**”) and made amendments to: (1) Section 10 of the Code 2010; (2) the Advisory Guidelines Governing Consolidation Review Process under Section 10 of the Code 2010 (“**Consolidation Review Process Guidelines**”); and (3) the Advisory Guidelines Governing Tender Offer Process under Section 10 of the Code 2010 (“**Tender Offer Process Guidelines**”).
3. On 10 August 2011, IDA commenced a public consultation (the “**Public Consultation**”) seeking comments on the proposed revised Section 10 of the Code 2010 (the “**Proposed Section 10**”) and proposed revised Consolidation Review Process Guidelines and Tender Offer Process Guidelines (the “**Proposed Guidelines**”).
4. At the close of the Public Consultation on 5 October 2011, IDA received comments from two parties, namely M1 Limited and Singapore

Telecommunications Ltd. IDA would like to thank both respondents for their comments which have been duly considered.

5. On 1 February 2012, the Telecommunications (Amendment) Act 2011 came into operation. Given the enactment of the revised Act, and having considered the comments from the Public Consultation, IDA now issues the Revised Section 10 and the Revised Guidelines. Part VA of the revised Act, the Revised Section 10 and the Revised Guidelines set out the M&A review framework for the telecommunications sector in Singapore. Other consequential changes are also made to the relevant sections of the Code 2010 in view of the enactment of the revised Act.
6. This cover note sets out the following:
  - (a) A summary of the comments received during the Public Consultation;
  - (b) IDA's response to the comments and issues raised by the respondents, and the changes made by IDA to the Proposed Section 10 and Proposed Guidelines;
  - (c) IDA's final decision and issuance of the Revised Section 10 and the Revised Guidelines; and
  - (d) A summary of the key consequential changes made to the Code 2010 arising from revisions to the Act.
7. Unless otherwise defined, capitalised terms used herein shall have the same meanings assigned to them in the Revised Section 10, the Revised Guidelines and the Code 2012.

## **PART II: SUMMARY OF COMMENTS RECEIVED IN IDA'S PUBLIC CONSULTATION AND CHANGES TO PROPOSED FRAMEWORK**

8. This section summarises the comments received by IDA during the Public Consultation, IDA's response to those comments and the key changes in the Revised Section 10 and Revised Guidelines.

### **Timeframe for M&A Transactions**

9. IDA proposed to simplify and standardise the timeframes under the Proposed Section 10, by stipulating that IDA's approval should be sought not less than 60 days before the completion of an M&A transaction (the "**60-day Timeline**"). In addition, where Acquiring Parties enter into an agreement (not amounting to an Open Market Transaction) for the M&A transaction, Applicants are also required to seek IDA's approval within 30 days from the time the agreement is entered into.
10. One commenter disagreed and noted that the 60-day Timeline would be "*operationally impractical, restrictive and highly inefficient from an investment perspective*". The commenter also noted that the 60-day Timeline is further complicated by IDA's right to extend its review period to a maximum of 120 days. The commenter concluded that the proposed 60-day Timeline would bring about greater uncertainty to the industry and opined that IDA's existing timeframes would suffice.
11. IDA would like to assure all parties that it will not unduly delay or prolong its review of any application without good reason. At the same time, however, the purpose of the M&A review framework is to ensure that there is effective regulatory oversight over major changes in ownership or control of licensed entities in the telecommunications sector. Hence, it is equally important that IDA be provided with sufficient time to properly assess the competitive effect of any M&A transaction.
12. From IDA's experience in reviewing M&A transactions, timelines may be prolonged when: (a) there is a need to seek industry comments on the proposed transaction; or (b) the transaction raises novel or complex issues. When undertaking M&A transactions, IDA would encourage parties to ensure that they have provided for adequate time to seek IDA's approval in view of these timelines.
13. Save for the single comment expressed by one commenter, IDA notes that the industry has not otherwise raised any concern. After careful consideration, IDA will incorporate the proposed amendments to the timeframes for M&A transactions in the Revised Section 10 of the Code 2012.
14. Notwithstanding the above, parties who are unable to comply with the timeframes stipulated under the Revised Section 10 of the Code 2012 with good cause may write to IDA to justify their inability to comply with the timeframes. IDA will assess such requests on a case-by-case basis. For the avoidance of doubt, IDA's approval will still be required prior to the conclusion

of any M&A transaction. Hence, it is in the interests of all parties for IDA's approval to be sought as early as possible.

### **Difficulties in Monitoring Changes in Voting Shares/ Voting Power**

15. Two commenters raised concerns about the obligation imposed on a designated telecommunications licensee (“DTL”) to monitor changes in its Voting Shares/ Voting Power, particularly in situations where the DTL is not notified in advance.
16. One commenter noted that the Proposed Section 10 appears to only take into consideration situations where the DTL is aware of intended M&A transactions at least 60 days prior to completion. However, the Proposed Section 10 does not adequately address the scenarios where a DTL may be informed of changes in its ownership only *after* such changes have taken place.
17. Another commenter sought IDA's clarification on what the obligation for a DTL to adopt “*reasonable procedures*” to monitor changes in its Voting Shares/ Voting Power entailed. The commenter noted that it would not be reasonable for a company to monitor changes in Voting Shares / Voting Power except to the extent that it is notified of such changes from its shareholders and investors.
18. IDA notes that the concern raised by the commenters may be more applicable to publicly-listed DTLs, whose shares are freely traded on an exchange in the open market. Such concern would clearly be inapplicable in a case involving a DTL that is not a listed entity<sup>1</sup>.
19. Notwithstanding the above, IDA would clarify at the outset that the obligation for a DTL to adopt reasonable procedures to monitor changes in its ownership interests is an existing one. This obligation ensures that IDA is able to effectively review M&A transactions involving the DTL. IDA is not imposing any new requirement on a DTL to monitor such changes.
20. Moreover, given the disclosure rules of exchanges and public availability of such market information once disclosed, IDA considers that any listed DTL would have the ability to put in place reasonable procedures to monitor changes in its Voting Shares / Voting Power.
21. In addition, IDA's M&A review framework has been in place since 2000. Any party that seeks to acquire any significant ownership interest in a DTL should be aware that it would need the necessary regulatory approval from IDA, or IDA may subsequently direct a divestiture and take other appropriate enforcement measures. Hence, IDA expects that in all cases, the acquiring party will co-operate with the DTL to ensure that it complies with all regulatory requirements.

---

<sup>1</sup> For a non-listed company, the shares in such a company are generally subject to transfer restrictions and the company itself would be in control of the process for transfer of shares and registration of new shareholders.

22. For the avoidance of doubt, IDA's position above, with regard to the active monitoring of ownership interests, shall apply to the monitoring of Units / Equity Interests / Voting Power in designated business trusts ("**DBTs**") and designated trusts ("**DTs**") as well.

**Declaration of Designated Telecommunications Licensees/ Designated Business Trusts/ Designated Trusts**

23. In IDA's document issued for Public Consultation, IDA proposed to continue to apply the same criteria for the declaration of DTLs under the Revised Section 10, i.e., IDA would continue to declare all Facilities-based Operation ("**FBO**") Licensees and certain Services-based Operation ("**SBO**") Licensees as DTLs. No comments were received in respect of this proposal. Accordingly, IDA has retained the existing list of DTLs, and declared them as DTLs pursuant to Section 32A(2) of the revised Act, by way of notification in the *Government Gazette*. For reference, these notices have been published on IDA's website at [www.ida.gov.sg](http://www.ida.gov.sg).
24. Separately, IDA is in the process of reviewing the list of SBO Licensees declared as DTLs. IDA will similarly declare such SBO Licensees as DTLs by way of notification in the *Government Gazette*.
25. As for the declaration of DBTs and DTs, where the trustee manager of the business trust or trustee of the trust has been declared as a DTL, IDA will also declare the relevant business trust or trust as a DBT or DT, as the case may be.

**PART III: SUMMARY OF KEY CONSEQUENTIAL CHANGES TO THE CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATION SERVICES ARISING FROM REVISIONS TO THE TELECOMMUNICATIONS ACT**

26. For consistency with the revised Act, IDA has also made consequential amendments to the Code 2010. The key consequential changes are summarised in this Part III.

**Revised Financial Penalties**

27. Under the revised Act, the financial penalties that IDA may impose for any contraventions of any code of practices have been revised. Specifically, Section 8(1) of the revised Act now provides that IDA may “*require the person to pay, within a specified period, a financial penalty of an amount not exceeding the higher of the following amounts:*
- (A) *10% of the annual turnover of that part of the person’s business in respect of which the person is granted the licence, as ascertained from the person’s latest audited accounts; or*
  - (B) *\$1 million.”*
28. In this regard, IDA has made consequential amendments to Section 11.4.4.4 of the Code 2010 to make reference to Section 8(1) of the revised Act.
29. Notwithstanding the increase in the amount of financial penalties that IDA may potentially impose for a contravention, IDA assures all parties that IDA will continue to carefully assess the facts of each matter, and will weigh all relevant mitigating and aggravating factors, prior to deciding on the appropriate financial penalty to be imposed.

**Changes to the Revised Section 10 and Revised Guidelines**

30. To ensure consistency with the revised Act, IDA has also made consequential editorial changes to the Proposed Section 10 and the Proposed Guidelines which were issued for consultation. These are drafting changes which do not change the substance or the policy intent of the provisions.
31. As no comments were received on the Proposed Guidelines, apart from the consequential editorial changes mentioned in paragraph 30 above, no other changes were made to the Revised Guidelines.

**Transitional Provisions and Application of the Code 2012**

32. The Code 2010 is cancelled with effect from the date of issuance of the Code 2012. The re-issuance of the Code 2012 ensures that licensees have a complete document (which includes the Revised Section 10 of the Code) to refer to.

33. To ensure the smooth transition between the Code of Practice for Competition in the Provision of Telecommunication Services 2005 (“**Code 2005**”), the Code 2010 and the Code 2012, IDA has drafted the necessary transitional provisions within the Code 2012, as follows:
- (a) All directions and notices issued by IDA under the Code 2005 or 2010 will continue to be in effect as if approved under the Code 2012.
  - (b) Similarly, any acts done or agreements made by any person before, but which continue after, the issuance of the Code 2012 will be governed by the terms of the Code 2012 as from its effective date.
  - (c) In respect of contraventions by any person under either of the revoked Code 2005 or Code 2010, however, that person will remain liable under that relevant Code as if it had not been revoked.
  - (d) Any proceedings commenced (but are uncompleted) before the issuance of the Code 2012, will be governed by the Code 2012, so long as they are consistent with the provisions of the Code 2012. Where IDA is unable to determine a proceeding as being consistent with the Code 2012, IDA will notify the parties and the proceeding must be withdrawn and new proceedings initiated under the Code 2012 instead. IDA assures that it will not take enforcement action against a person under both a revoked Code 2005 or Code 2010 and the Code 2012 for the same contravening agreement or act.
  - (e) In relation to reconsiderations/ appeals on those proceedings, if such reconsiderations/ appeals arise after the Code 2012 is issued, then they will be heard under the Code 2012.

The various transitional provisions make clear that all directions, notices, decisions etc which were made either under the revoked Code 2005 or Code 2010 shall continue to be consistent with and apply under the Code 2012. This will ensure that all such directions, notices, decisions etc do not become obsolete with the introduction of the Code 2012.



#### **PART IV: CONCLUSION**

34. IDA hereby issues the Revised Section 10 and the Revised Guidelines, which will take effect on 9 April 2012.
35. IDA has made revisions to Section 10 of the Code 2010 including consequential amendments to the Code 2010 arising from the changes to the Act.
36. In view of the above changes, the Code is hereby re-issued as the Code 2012. IDA has also issued the “Notice – Code of Practice for Competition in the Provision of Telecommunication Services 2012” (the “**Notice**”) which makes clear that all relevant notices and advisory guidelines issued pursuant to the Code 2010, shall continue to remain applicable under the Code 2012. The Notice can be found on IDA’s website at [www.ida.gov.sg](http://www.ida.gov.sg).
37. The Code 2012 will come into effect on 23 April 2012, as further elaborated in Part III of this cover note.
38. IDA is also in the process of reviewing the Telecom Competition Guidelines and the Reclassification and Exemption Guidelines issued under the Code 2012. IDA will, wherever appropriate, solicit views from interested parties prior to the revision of existing or implementation of new frameworks.